of dollars annually to the costs of doing business for that category of carriers alone.

In sum, verification of inbound calls is a purported "solution" in search of a virtually nonexistent "problem." Rather than provide any protection from unscrupulous carriers -- who would undoubtedly ignore this requirement, just as they do with other current rules -- inbound verification would only increase dramatically the compliance costs of law-abiding carriers without providing any measurable consumer benefit.[48] The Commission should therefore reject the Further Notice's tentative conclusion regarding the need for this measure.

VII. ADOPTION OF THE COMMISSION'S RULES HERE WILL PREEMPT INCONSISTENT STATE CARRIER SELECTION REQUIREMENTS

Like AT&T (Comments, pp. 36-39), numerous other carriers demonstrate in their initial comments that the continued proliferation of widely varying and mutually inconsistent state rules governing the carrier selection

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[48] Moreover, even if the Commission were to conclude (contrary to the record evidence) that additional consumer protection is needed on inbound calls, it cannot simply require verification of such calls without first analyzing whether less costly and burdensome alternatives, such as requiring carriers to obtain identifying data (e.g., the customer's birth date) before submitting a carrier change order will provide adequate protection of consumers on inbound calls. The Commission is also required to analyze whether any such measures should be limited to particular inbound telemarketing (such as responses to media advertising and direct mail) that may, in the Commission's view, raise even an attenuated threat of unauthorized change orders.

and verification process is certain to frustrate the uniform effectuation of the Commission's antislamming rules, as well as to undermine the pro-competitive goals of the Telecommunications Act of 1996.[49] As these parties correctly point out, neither the Telecommunications Act nor well-established federal supremacy principles permit such a result.

In this rulemaking, the Commission proposes to extend its current interLATA carrier selection verification procedures to also cover intraLATA and local carrier selections -- a proposal which, as shown above, is essentially unopposed in the record. Once adopted, these regulations will entirely displace state regulation of this subject. Section 258(a) of the Communications Act expressly prohibits carriers from submitting a change in a customer's "telephone exchange service or telephone toll service [provider], except in accordance with such verification procedures as the Commission shall prescribe" (emphasis supplied). Several commenters assert that the statute thereby confers exclusive jurisdiction on the Commission over verification procedures for these carrier selections.[50] However, at a

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[49] See ACTA, pp. 19-22; Working Assets, pp. 1-2; RCN, p. 3; TW Comm, p. 3; Excel, p. 2; Frontier, p. 2; CWI, p. 2.

[50] See TW Comm, pp. 3-4; RCN, p. 3; CWI, pp. 2, 5-8; Excel, p. 2; Frontier, pp. 2, 8-12; Working Assets, pp. 1-2. California's contrary claim (p. 3) that

(footnote continued on following page)

minimum this provision must be deemed to displace conflicting state regulation of intraLATA and local carrier selection.[51]

There is likewise no room for a state role in promulgating verification rules for interLATA carrier selections, even in multiLATA states.[52] State rules that prohibit reliance on verification mechanisms that the Commission's rules expressly permit,[53] or that

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(footnote continued from prior page)

Section 258 nevertheless allows states to adopt their own intraLATA and local carrier selection verification rules is based on the second sentence of Section 258(a), which preserves the states' enforcement authority over intrastate services. What California ignores is that this language refers to the states' authority to enforce "such procedures" (emphasis supplied) as the Commission adopts for intraLATA toll and local carrier selections under the first sentence of Section 258(a).

51 In Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997), the Court of Appeals found that Section 276 of the Communications Act, granting the Commission authority to "fairly compensate[]" private payphone owners, constituted "an express mandate to preempt [s]tate regulation of local coin calls." The Commission's statutory authority over intrastate carrier selection under Section 258 is even clearer.

52 As AT&T showed in its Comments (p. 37 n.52), those single LATA states, such as South Dakota, that have adopted rules governing interLATA carrier selections have impermissibly intruded on the Commission's plenary and exclusive jurisdiction because those selections necessarily involve only interstate service.

53 For example, Texas has recently adopted regulations that effectively prohibit interLATA carrier change orders based on LOAs that fully comply with the

(footnote continued on following page)

"supplement" those rules by requiring carriers to comply with additional burdensome procedures,[54] both have the effect of thwarting the implementation of federal presubscription requirements and are therefore precluded as a matter of law.[55]

As many of the commenters correctly point out, the growing patchwork quilt of state presubscription rules not only are inconsistent with the letter of the Commission's regulations, but also threaten to subvert the Commission's twin goals of providing adequate consumer protection while at the same time preserving vibrant competition in the interexchange market. The increasing balkanization of the presubscription process,

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Commission's required standards for disclosures in such documents.

54 A prime example of such state regulation is California's requirement that carriers verify even written change authorizations ("LOAs") prior to submitting those orders to LECs. Because an order for inter- and intrastate interLATA is inseverable, California's verification requirement necessarily precludes carriers from submitting a change order for interstate service based solely on an LOA, despite the Commission's rules authorizing changes on that basis.

55 See AT&T Comments, p. 38 and nn.53-54 (citing cases). Moreover, to the extent such state presubscription rules may effectively prohibit competitive entry into intraLATA and local markets, Section 253 of the Communications Act bars such state regulation. See, e.g., Silver Star Telephone Co., Inc. (Petition for Preemption and Declaratory Ruling), Memorandum Opinion and Order, FCC 97-336, released September 24, 1997.

virtually on a state-by-state basis, dramatically increases the costs of carriers that attempt to market their services on a regional or nationwide basis. The resultant drains on current competitors' resources, and barriers to new entrants, cannot be justified by any purported consumer protection motives for widely divergent state rules.

Contrary to some state commenters' claims, moreover, the Commission has never authorized conflicting state regulation of interLATA presubscription. California, for example, cites (p. 2 and Appendix A) a July 3, 1996 staff interpretive ruling that found no inconsistency between the Commission's rules and a California Public Utilities Commission ("CPUC") interim order prohibiting Heartline Communications, a notorious slammer, from submitting any new carrier change orders pending the outcome of an investigation into its practices.[56] But the cited staff ruling did not even suggest, much less purport to hold, that the CPUC could adopt any rules governing interLATA presubscription (whether or not such rules were consistent with federal requirements). Rather, the staff simply found that the CPUC was not preempted from adopting an interim remedy for Heartline's flagrant violations of the Commission's

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[56] See California Public Utilities Commission (Request for Interpretive Ruling), DA 96-1077, released July 3, 1996.

existing prohibition against combined sweepstakes/LOAs and its failure to verify carrier changes obtained through telemarketing.

Thus, far from supporting any state authority to promulgate presubscription rules, the Commission's action in that case underscores what AT&T demonstrated in it Comments (pp. 38-39): namely, that Section 258 expressly preserves the states' authority to enforce a uniform, nationwide set of carrier selection rules prescribed by the Commission. In conjunction with the private enforcement remedy authorized by Section 258(b), this enforcement role of the state commissions can play an important role in mitigating the ongoing problems created by unauthorized carrier changes.

CONCLUSION

For the reasons stated above, the Commission should adopt the proposals in the Further Notice with the modifications described herein and in AT&T's Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 29th day of September, 1997, a copy of the foregoing "AT&T Reply Comments" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

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